IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 5 of 2002

Between:

S.Venkateswar Rao, S/o. Sri Late S.Ranga Rao,
2-7-1187, Kanakadurga Colony,
Hanamkonda, Warangal.

..... PETITIONER

AND

1 The District and Sessions Judge, Warangal.
2 The IV Addl. Junior Civil Judge, Warangal.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an Order or Direction more particularly one in the nature of Writ of Certiorari to declare the orders dt.22.12.2001 made in Dis.No.3414 passed by the respondent No.2 in refixing the pay and allowances of the petitioner and proposing to recover an amount of Rs.40,696/- (Rupees Fourty Thousands six hundred and ninety six only) from the petitioner's salary is arbitrary, illegal, without jurisdiction, besides violative of fundamental rights and the principles of natural justice guaranteed under the Constitution of India and consequently quash the same as null and void.

Counsel for the Petitioner:MR.A.RAMAKRISHNA REDDY

Counsel for the Respondents: Mr.C.V.Nagarjuna Reddy, Standing Counsel for the High Court.

The Court made the following :

ORAL ORDER: (per the Hon'ble the Chief Justice)

The petitioner was appointed as Copyist on 1st March, 1984, promoted as L.D.C., on 4th June, 1987 and joined duty as Junior Assistant on 10th June, 1987 in the time scale of Rs.425-650. As the post of Copyist and Junior Assistant carry the same pay scale of Rs.425-650, petitioner was allowed to draw the same pay even after promotion as Junior Assistant with effect from 10th June, 1987. He also drew the increments every year. His pay was fixed in the revised time scale of pay of 1986, 1993 and 1999 from time to time.

Petitioner was posted as Junior Assistant in Family Court, Warangal and while working as such, he made an application to the Judge, Family Court, Warangal for refixation of his pay claiming two increments under Fundamental Rule 22 (B). Acting on the petitioner's representation, Judge, Family Court refixed petitioner's pay by granting two increments with effect from 10th June, 1987 to 30th April, 2000 and by Treasury token dated 12th May, 2000, the petitioner got the arrears also. When the proceedings were sent to the District and Sessions Judge, Warangal, he informed the IV Additional Junior Civil Judge, Warangal that fixation of pay of petitioner by granting two increments under F.R.22 (B) was erroneous and direction was issued to refix his pay by deleting the benefit of FR 22 (B) holding that he is not entitled to the benefit in view of the decision of the Full Bench of this Court in G.PADMA REDDY vs GOVERNMENT OF A.P. [1993 (1) ALT 511]. In the said decision, the Full Bench held that as the Examiners, Copyists and Readers in A.P. Judicial Ministerial Service though are promoted to the post of Junior Assistant/Lower Division Clerk carrying same time scale of pay, they are not entitled to pay fixation in promotional posts at the stage next above, by notionally arriving at, by increasing their pay in the lower post. Thus impugned proceedings were issued for effecting recovery. Writ Petition was filed.

It is opposed by the respondents saying that there is no merit in the petition.

When the case was taken up for hearing, learned counsel for the petitioner has conceded that in view of the decision of the Full Bench, the petitioner could not have claimed the benefit of refixation of pay and it was rightly again refixed. He, however, submits that as the petitioner has withdrawn the amount of arrears therefor, in view of what was stated by the Full Bench in the last paragraph i.e., not to realize the amounts already withdrawn by the petitioner therein, the same treatment be given to the petitioner also.

We have duly considered the submission made by the learned counsel for the petitioner and do not find any substance therein. It was after the decision of the Full Bench that the petitioner, of his own, moved an application and since it was a voluntary act on the part of the petitioner to have sought the benefit and got the benefit, though he was not entitled thereto, in view of the decision of the Full Bench, rendered more than six years prior to his withdrawing the amount, the petitioner cannot be given the same benefit of not realizing the amount unlawfully realized. It is not a case where the amounts were withdrawn under some mistake or by the mistake of the respondents of their own. It was a case of the act and conduct of the petitioner that the amount was released to him by allowing his application. Therefore, there is nothing wrong in the order impugned in the writ petition. Therefore, writ petition is liable to be dismissed.

The writ petition is accordingly dismissed and the interim order is vacated. While dismissing the writ petition, we make it clear that the respondents may consider the desirability of recovering the amount in reasonable installments.

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DEVINDER GUPTA, CJ

10-2-2005

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B.SESHASAYANA REDDY, J

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To

1 The District and Sessions Judge, Warangal.
2 The IV Addl. Junior Civil Judge, Warangal.

3 2 CCs to the Standing Counsel for the High Court of A.P., High Court

Buildings, Hyderabad (OUT).

4 2 CD copies.